IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

S.B. CRIMINAL APPEAL NO.305/1988
(State of Raj.Vs.Miya Ram@ Bhiya Ram)

Against the judgment dated 17.9.1987 passed by Munsif and Judicial Magistrate, First Class, Dungla, District Chittorgarh in Criminal Case No.66/78.

Date of Judgment : 18th February, 2005

P R E S E N T

HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK

Mr. O.P. Boob, Public Prosecutor for the State.
No one appears on behalf of accused respondent.

BY THE COURT :

This appeal has been filed by the State against the judgment and order dated 17.9.1987 passed by learned Munsif and Judicial Magistrate, First Class, Dungla, District Chittorgarh in Criminal Case No.66/1978, whereby the accused respondent has been acquitted of the charge under Section 4/9 of the Opium Act.

The leave to appeal was granted against the accused respondent on 29.7.1988.

It has been contended by learned Public Prosecutor

that near about 3 Kgs. Of Opium was recovered from the accused persons and one of accused Chokharam had made confessional statement and he was punished accordingly. But since the present accused respondent did not plead guilty, therefore, he was tried for the offence under Section 4/9 of the Opium Act. According to the learned counsel, the recovery from the accused has been proved, therefore, it should be presumed that it was only the accused who was liable to be punished in view of the fact that opium so recovered from the possession of the accused was sent for chemical examination in due course of the time and the prosecution evidence amply proved the case of the guilt of the accused. Learned counsel has further submitted that material discrepancies will not entitle the accused to be acquitted of the charge. He further contended that there is always a presumption that article remain in the custody of the police is in safe possession and that it remained intact and sealed.

No one appears on behalf of the accused respondent.

Now, it is to be seen that the alleged Opium was recovered from the possession of the accused persons by the police when they were on petrolling duty in the night of 24.3.1978. The learned trial court after

examining the evidences of the prosecution came to the conclusion that there is no reliable evidence of the fact which really involved accused with the crime and that the opium so recovered from the possession of the accused was same which was sent for the chemical examination. The evidence adduced by the prosecution was not found to be sufficient to connect the accused with the recovery to the extent that the opium so recovered kept in sealed position in the Police Station and it remained there in safe custody and that the opium so recovered was sent to the Forensic Science Laboratory and the seal put on the recovered article were kept intact. In above circumstances, the trial court extended the benefit of doubt to the accused.

In these facts and circumstances of the case, I do not find any reason to take a different view from one which has been taken by the learned trial court for the reason that in the matter arising out of the NDPS Act, it is always the duty of the prosecution to prove that the recovery made from the accused in relation to opium etc. was properly sealed and the sealed was kept intact and it was properly dispatched to the Forensic Science Laboratory and the receipt of the dispatched article should always be there. In the absence of proof of the articles sent to the Forensic

Science Laboratory and while keeping the same in police custody, make a room for suspicion. If that is so, then, in my humble opinion, the learned trial court while reaching to the conclusion that it was a case where benefit of doubt should be given to the accused and in that facts and circumstances of the case, discretion exercised by the learned trial court cannot be said to be erroneous. As such, in my view, there appears to be no merit in the appeal filed by the State and same deserves to be dismissed after confirming the judgment and order passed by the trial court.

Accordingly, the appeal filed by the State stands dismissed.

(Satya Prakash Pathak), J.